IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7556 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HABIBBHAI HASANBHAI KHATRI

Versus

DISTRICT MAGISTRATE

Appearance:

MR SATISH R PATEL for Petitioner

Mr.D.N.Patel, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 18/02/2000

ORAL JUDGEMENT

The detenu has been detained by the District Magistrate, Vadodara, respondent no.1 herein under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA" for short) by an order dated 2.7.1999 which is annexed at Annexure A.

2. The grounds of detention served on the detenu are produced on record vide Annexure C dated 2.7.1999. The detenu was found on 9 occasions dealing in illicit liquor and all the cases are pending against him. He is a person keeping dangerous weapons like Rampuri knife, gupti, hockey and is compelling others to store illicit liquor and if anyone is not helping in his illicit liquor business he is being threatened. The statement of witnesses are also considered by the Detaining Authority. It is clear that under the threats the detenu was disturbing the peace prevailing in the society. It is not necessary in the instant case to consider the grounds of detention in detail or to decide the legality or otherwise of the said grounds as the continued detention is required to be held bad and illegal. In Para 16 of the petition, the detenu has raised a ground that he forwarded a representation dated 6.9.99 to the Honourable Home Minister by Regd. letter which has been duly received by the Office. He has not been communicated about the outcome of his representation. There is no affidavit filed by the State indicating that the representation has been decided or not. Suffice it to say that in the matter of detention the order of detention must not only be legal but continued detention should also be legal and in accordance with law. In absence of affidavit, it would not be possible for the Court to say that the continued detention is legal as the representation has not been disposed of by the State. Under the circumstances, the continued detention is required to be held bad and illegal. The detenu is ordered to be released forthwith, if not required in any other case. Rule made absolute with no orders as to costs.

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